held adverse possession of a field for twelve years, your title has become indefeasible. If you hold a watch deposited with you, and the owner does not reclaim it in thirty years, he can no longer do so[2].

Long possession covers all defects, except those which naturally one would perceive to be incurable[3]. Provided the possession was not by fraud, and was open and peaceable but yet showing the intention to hold *as one's own* (*i.e.*, "adverse") it will prevail[4].

Section IV.—On the Transfer of property.

§ 1.

I have now to offer a few remarks regarding the transfer of property. But it will not be necessary for us to enter on the study of any branches of law specially relating to transfer.

The whole subject of 'voluntary transfers,' such as sale, mortgage, lease, inheritance and succession, we shall have nothing to do with; nor shall we (except incidentally when we come to Civil Procedure) deal with "involuntary transfers" by process of court. But there are certain general features of the subject of transfer of which notice must be taken.

§ 2.

I have adverted to the fact[5] that originally ownership did not reside in individuals, but in sections of tribes and afterwards in

[2] *Ibid*, section 26 and the schedule, first division, Nos. 144, 145, &c., &c.

See Markby, § 383, &c. Here I may note the absurdity of the legal maxim that "prescription always presumes a grant," which is commonly given in law books as if it were really a fact. It possibly arose from the excessive dislike of lawyers to acknowledge a right which could not be traced to some recognised method of acquisition that was not open to question. The fiction that, even under circumstances where a grant was as unlikely as possible, nevertheless it was made, was invented accordingly.

[3] The period of limitation does not run as long as by fraud, or fraudulent concealment of a document; the person entitled is kept from the knowledge of his right, or is unable to establish it (Limitation Act, section 18). Nor, as long as possession is merely by permission of the owner, or is in secret and unknown to him; for the limitation runs from the date when the possession *becomes adverse*. (Schedule 1, No. 144).

[4] See note at page 9 *ante*.

families in common. Had every member of such a community held the specific right to dispose of his share in the property as he pleased, the family would have broken up.

Nevertheless, it was impossible to resist alienation under all circumstances whatever, but still, it was, in early historical times, made as rare and as difficult as possible. Every transfer was hedged about with solemn formalities and with devices for preserving at least the form of the family control.

To this day in Indian village communities this is kept up to some extent; there is always a "right of pre-emption" by which the intending seller must offer the property first to the other members of the community[6].

While this right has been maintained in India, we have otherwise passed into the more modern phase of feeling that property should be freely transferable.

§ 3.

This phase is always, of course, sooner reached in the case of movable property; but there remain in all cases certain features distinguishing the transfer of immovable property; and the cause of this it is not difficult to understand. A transfer of ownership cannot be regarded, observes Mr. Markby[7], as simply a contract. The essence of a contract is that it concerns the rights and obligations *only* of the parties thereto, whereas, it is the essence of a transfer of ownership that it concerns the obligations at any rate if not the rights (but frequently both) of an unlimited number of persons. And this is obviously much more the case with houses or lands than it is with movable property, though it is true of both.

[6] This is usually termed "haq-shuf'a"—an Arabic term derived from the Musulman law, in which the right was acknowledged for purposes quite similar, *viz.*, to maintain the tribal or family union. This has been aided by provisions of the law, which render it difficult (and only as a last resort) to sell landed and especially ancestral property in executing a decree of civil court, or for satisfaction of arrears of Government revenue.

[7] Markby, § 470 (Supplement).

Supposing, for instance, that I am owner of a piece of land of which you are tenant, or of goods which are stored in your warehouse; if I sell this land or these goods to a third person without any communication with you, your position is naturally affected; you have to pay rent in one case or receive it in the other from a different person, and the right to resume the goods or the land at the close of the tenancy belongs to a different person: yet this change of rights and the obligations was not the result of any contract with you.

There is, indeed, no change in the *nature* or *extent* of the rights or obligations, and hence all you need is to *know the fact* of the transfer. All business transactions would be difficult, if not impossible, unless the ownership of property was known.

§ 4.

There is also another point to be noticed. The more permanent and valuable property is, the more necessary it is that the title of the possessor should be made secure and not liable to be made void. Supposing, for example, you find that you have unknowingly bought a horse which has been stolen, and that the owner reclaims it; after all, your loss and the inconvenience is very trifling; but it might most seriously affect a man, and perhaps the whole means of the support of himself and family, if he found that a purchase of a farm, or of a house in which he had settled down, was invalid and that he must suddenly turn out of it. Hence the law requires certain formalities and securities in the case of transfer of immovable property, tending to secure the *knowledge* of the *fact* of transfer, and to avoid the chances and inconveniences likely to result from fraud and uncertainty in the transfer.

§ 5.

In early law, indeed, there was no need to refer to these considerations, because the transfer of the right, and the transfer, in fact, of the property, were inseparable; but although, as time went on, the separability of the two things became gradually recognised, it

nevertheless long remained a rule founded on convenience that to complete a transfer there should be an actual delivery. An *intention* to transfer, or an *agreement* to transfer, might create a personal obligation between the intending transferer and transferee; but in order that the *ownership* should pass, delivery must follow.

Only traces of this principle remain in the law of modern nations. It would be too difficult and cumbrous a process to enforce in all cases; still the idea has remained; as may be judged first by the fact that some modern laws, while acknowledging the possibility of completed transfer without delivery, nevertheless place cases where delivery has occurred, in a more advantageous position than those where it has not occurred.

In our Indian law, it is perhaps not generally known, an oral contract of sale of houses or lands, *followed by actual delivery of possession*, is not put aside in favour of a written registered document of sale of a later date.

§ 6.

But when these traces of the rule requiring actual delivery of possession do not survive (or, in other cases, alongside of them), we have usually various rules of law which aim at *securing publicity to all transfers and preventing uncertainty by facilitating proof.* Some laws aim at the latter only, when they require particular agreements to be in writing.

In India the registration law aims at both objects. Thus, you may sell or mortgage land orally, if you give possession at the same time; but if possession does not follow, you will have no legally binding contract, unless it is in *writing and registered*[8].

The outlines of registration law, as far as practically useful, will be described in a later chapter.

[8] If the property is of the value of 100 rupees and upwards. I am also speaking of private transactions: In transfers to which Government is a party, the registration may not be necessary.